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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/486,531	05/22/2000	DIETER HUSAR	DT-3368	8611
30377	7590	12-02/2003	EXAMINER	
DAVID TOREN, ESQ. SIDLEY, AUSTIN, BROWN & WOOD, LLP 787 SEVENTH AVENUE NEW YORK, NY 10019-6018			GORDON, BRIAN R	
			ART UNIT	PAPER NUMBER
			1743	

DATE MAILED: 12/02/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Advisory Action</b>	<b>Application No.</b> 09/486,531	<b>Applicant(s)</b> HUSAR ET AL.	
	<b>Examiner</b> Brian R. Gordon	<b>Art Unit</b> 1743	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 07 November 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 07 November 2003. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: 96-101, 142 and 143.

Claim(s) objected to: 117-121, 123 and 124.

Claim(s) rejected: 102-115, 125, 126, 129, 130 and 132-141.

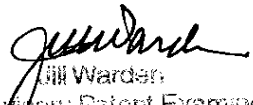
Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

Continuation of 3. Applicant's reply has overcome the following rejection(s): The previous 112 rejection of claims 96, 98, 100-101, 103-115, 122, 126, 128-129, 132, and 136-137 in the final rejection

Continuation of 5. does NOT place the application in condition for allowance because: Applicant asserts on page 30 of the arguments that Lintel does not teach a system having a micro-diaphragm pump and an open-jet proportioner connected in series. The examiner asserts that the arguments are not commensurate in scope with that of claim 102. Claim 102 does state that the open jet proportioner is connected to an exit of the micro-diaphragm pump. This broad limitation however does not require the two components be directly connected nor in series as suggest by applicant's arguments. Claim 114 as drafted does not establish a combination as applicant intends. It appears as if the claim should read the "micro-diaphragm pump and one of at least the open jet proportioner and the reservoir". As presently drafted it is unclear what is being combined to form one constructional element. A combination cannot be created from at least one of the three elements recited. As such the claim only requires one of the three elements be connected to an actuator. Applicant asserts that Lintel does not disclose a reservoir with auxiliary liquid. While the liquid of Lintel is not referred to as an auxiliary liquid, it is one's own choice to refer to the liquid by any name. The fluid referred to in the reservoir as a medicant is only an example and does not exclude any other types of fluids being used in the pumping system. Furthermore, the reservoir is structurally capable of containing an auxiliary liquid. As to the proportion control means, it is clearly stated that the fluid within the pumping system may be pumped from the reservoir (see previous office action).

Claims 114, 139-141 would be rejected under 112 second paragraph for it appears as if the claims should read the "micro-diaphragm pump and one of at least the open jet proportioner and the reservoir". As presently drafted it is unclear what is being combined to form one constructional element. A combination cannot be created from at least one of the three elements recited. As such the claim only requires one of the three elements be connected to an actuator.

  
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